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8
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10 UNITED STATES

CV-S-04-0348-RLH-PAL

11 DISTRICT

12 JANE ROE, individually, and the natural
13 mother and Guardian on behalf of
PRESCHOOLER II, a minor child.

14 *Plaintiffs,*

15 vs.

16 THE STATE OF NEVADA; STATE OF
17 NEVADA DEPARTMENT OF
EDUCATION; KEITH RHEAULT, *in his*
18 *individual and official capacity*; CLARK
COUNTY SCHOOL BOARD OF
19 TRUSTEES; CLARK COUNTY SCHOOL
DISTRICT, CARLOS ARTURO GARCIA,
20 *in his individual and official capacity*;
CHARLENE A. GREEN, *in her individual*
21 *and official capacity*; MICHAEL S.
HARLEY, *in his individual and official*
22 *capacity*; KAY DAVIS, *in her individual and*
official capacity; DARRYL WYATT, *in his*
23 *individual and official capacity*; KATHLEEN
LISANTI, *in her individual and official*
24 *capacity*; and DOES 1 to 10, Inclusive,

25 *Defendants.*

**COMPLAINT FOR JUDICIAL REVIEW,
DECLARATORY, EQUITABLE RELIEF
AND DAMAGES**

First Cause of Action
Petition for Judicial Review, Declaratory
and Equitable Relief and Claim for
Attorney's Fees and Costs

Second Cause of Action
Violation of the Americans with
Disabilities Act and Rehabilitation Act

Third Cause of Action
Violation of the Rehabilitation Act

Fourth Cause of Action
Violation of Title 42 U.S.C. §1983

Fifth Cause of Action
Monell/Canton

Sixth Cause of Action
Assault, Battery and Use of Aversive
Interventions

Seventh Cause of Action
Negligence Claims

JURY TRIAL DEMANDED

JURISDICTION & VENUE

1. This Court has jurisdiction of the action under *Title 28 United States Code* §§ 1331 and 1334. This action arises under the *Fourth* and *Fourteenth Amendments* to the *United States Constitution*, and other federal laws, which are not limited to, *Title 42 United States Code* §§ 1983 and 1988; the *Americans with Disabilities Act* of 1990 (ADA) (*Title 42 United States Code* § 12133 *et seq*); § 504 of the *Rehabilitation Act of 1973* (RA); *Title 29 United States Code* § 474 as amended; the *Handicapped Children's Protection Act of 1986* (HCPA) *Title 28 United States Code* § 1415(e); and *Individuals With Disabilities Education Act* (IDEA) as Amended, *Title 20 United States Code* §1400, *et seq* and the regulations thereto (formerly entitled the *Education of the Handicapped Act* (EHA)); *Nevada Revised Statutes* §§ 385, 388 and the *Nevada Administrative Code For Special Education Programs* § 388 (NAC).

2. This case is filed in this location and district because the incidents arose in the City of North Las Vegas, Clark County, State of Nevada involving Plaintiffs who are residents of said city, county and state.

3. This Court is vested with original jurisdiction over the federal claims by operation of *Title 28 United States Code* §§ 1331, 1343, 1367, and 1415 and has supplemental jurisdiction pursuant to *Title 28 United States Code* § 1367 to hear claims arising under the Constitution and laws and Administrative Codes of the State of Nevada.

4. This Court is vested with the authority to grant declaratory relief and judgment by virtue of *Title 28 United States Code* § 2201, *et seq.*

5. This Court is vested with the power to issue injunctive relief pursuant to the *Federal Rules of Civil Procedure*, Rule 65.

6. This Court is authorized to grant attorneys' fees pursuant to *Title 42 United States Code* § 1988 and pursuant to the IDEA at *Title 28 United States Code* § 1415.

7. Venue in this Court is proper under *Title 28 United States Code* § 1391, and this Court has personal jurisdiction over the Defendants in this matter because the events giving rise to this

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claim occurred, and will continue to occur, in this district.

PARTIES

PLAINTIFFS

8. Plaintiff Preschooler II was at all times mentioned herein a disabled autistic student as defined pursuant to the *Nevada Administrative Code* (hereinafter "*N.A.C.*") § 388.028. He was at all times mentioned herein four (4) years of age, in need of special education, benefits and other related services. (*Nevada Revised Statutes* (hereinafter "*N.R.S.*") §§ 395.065, 395.008, 395.010, 395.020, 388.132, 388.135, 388.440, 388.450, 388.5295, 388.531, 388.5315, 388.526, 388.5215, 388.5265, *N.A.C.* §§ 388.215, 388.245, 388.255, 388.284, 388.287, 388.315) Furthermore, Plaintiff Preschooler II was at all times mentioned herein diagnosed and classified as a student with health impairments as defined pursuant to *N.A.C.* § 388.046.

9. Plaintiff Jane Roe is the parent of Plaintiff Preschooler II.

10. Plaintiff Jane Roe brings this lawsuit on behalf of herself and on behalf of Plaintiff Preschooler II, her natural child.

11. At all times mentioned herein Jane Roe resided within the jurisdiction and venue of this Court, in the City of North Las Vegas, Clark County, State of Nevada.

12. Plaintiffs allege that at all times mentioned herein any and all of the events involving them, described herein took place within the jurisdiction and venue of this Court.

13. Plaintiffs are informed and believe that they are third-party recipients of certain educational and financial federal benefits, services, entitlements, due process and equal protection rights for Plaintiff Preschooler II which are administered, implemented, organized and enforced by the Defendants mentioned hereinafter.

DEFENDANTS

14. Plaintiffs are informed and believe that at all times mentioned herein Defendant State of Nevada, herein "Nevada" is the recipient of federal subsidy under the above mentioned ADA, RA, HCPA, and IDEA.

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1 15. The Plaintiffs allege that in some manner the State of Nevada is and was at all times
 2 mentioned herein responsible for the acts, omissions, policies, customs, practices,
 3 implementation, and conduct committed by itself and the remaining Defendants.

4 16. In addition, based on *Title 20 United States Code* § 1403, which pertinently states, “(a)
 5 . . . A State shall not be immune under the eleventh amendment to the Constitution of the
 6 United States from suit in Federal courts for a violation of this chapter. (b) In a suit against
 7 a State for a violation of this chapter, remedies (including remedies both at law and in equity)
 8 are available for such a violation to the same extent as those remedies are available for such
 9 a violation in the suit against any public entity other than a State”, the State of Nevada is
 10 subject to the jurisdiction of this court to adjudicate the Plaintiffs’ claims in law and in equity
 11 as to claims as alleged herein, particularly for equal protection and due process violations
 12 constituting educational harassment. Independently, the State of Nevada in accepting federal
 13 funds, has waived immunity under the Spending Clause of the *Constitution of the United States*.

14 17. Pursuant to *N.R.S.* § 395.065, Nevada was statutorily mandated to provide related
 15 services to Plaintiff Preschooler II, which included and not limited to, a helmet and other
 16 protections due to life threatening physical and medical ailments, which included and is not
 17 limited to “*Tuberous Sclerosis*”¹.

18 18. Plaintiffs allege that Nevada was statutorily mandated to provide the Plaintiff Preschooler
 19 II with a special education program as defined in *N.R.S.* § 395.008 and to attend the School
 20 District educational institutions as defined in *N.R.S.* § 395.075.

21 19. Plaintiffs allege that Nevada was mandated to secure the educational program and related
 22 services provided to disabled person, such as he, in accordance with *N.R.S.* § 395.010.

23
 24
 25 ¹*Tuberous Sclerosis* (TS) is among other complex and life threatening disability and ailments,
 26 a genetic disorder that cause tumors to form in many different organs, primarily in the brain,
 27 eyes, heart, kidney, skin, and lungs. TS is not contagious. Children diagnosed with TS will
 28 show symptoms such as seizures, a reddish rash on their face (*facial angiofibromas*), or skin
 lesions.

1 20. Plaintiffs allege that Plaintiff Preschooler II satisfied the Nevada eligibility standards to
2 receive Nevada education benefits as provided pursuant to *N.R.S.* § 395.020.

3 21. Plaintiffs are informed and believe that at all times mentioned herein Defendant State of
4 Nevada Department of Education, hereinafter "State Board" was and continues to be statutorily
5 mandated pursuant to the *Nevada Revised Statutes* § 385.080, and among other things, "...
6 *shall establish policies to govern the administration of all functions of the state relating to*
7 *supervision, management and control of public schools . . .*" Hence, the Plaintiffs allege that
8 in some manner the State Board is and was at all times mentioned herein responsible for the acts,
9 omissions, policies, customs, practices, implementation, and conduct committed by itself and
10 the remaining Defendants.

11 22. Plaintiffs are informed and believe that at all times mentioned herein the State Board is
12 and continues to be a recipients of certain educational federal financial funds for disabled
13 students, such as Plaintiff Preschooler II.

14 23. In addition, based on *Title 20 United States Code* § 1403, *supra*, the State Board is
15 subject to the jurisdiction of this court to adjudicate the Plaintiffs' claims in law and in equity.

16 24. Plaintiffs are informed and believe that at all times mentioned herein Defendant State of
17 Nevada Superintendent of Public Instruction Keith Rheault, hereinafter "Rheault" was and
18 continues to be statutorily mandated pursuant *N.R.S* §§ 395.010, 395.040, and 388.5295.4, and
19 responsible for the supervision and administration of public schools in the State of Nevada.

20 25. Plaintiffs allege that the school which Plaintiff Preschooler II attended was among those
21 schools Defendant Rheault was responsible and charged with supervising. In addition,
22 Defendant Rheault, at all times mentioned herein, retained jurisdiction and venue of said school.
23 Hence, the Plaintiffs allege that in some manner Defendant Rheault is and was at all times
24 mentioned herein responsible for the acts, usages, omissions, policies, customs, practices,
25 implementation, and conduct committed by himself and the remaining Defendants. (*N.R.S.* §§
26 395.010, 395.040, and 388.5295.4)

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1 26. Plaintiffs are informed and believe that at all times mentioned herein Defendant Rheault
 2 was statutorily empowered to hire, supervise, train, discipline, suspend and discharge any
 3 subordinate defendants mentioned hereinafter. (*N.R.S.* §§ 395.010, 395.040, and 388.5295.4)

4 27. Plaintiffs are informed and believe that at all times mentioned herein Defendant Rheault
 5 is and continues to be the administrator and recipient of certain educational federal financial
 6 funds for disabled students, such as Plaintiff Preschooler II.

7 28. Plaintiffs are informed and believe that at all times mentioned herein Defendant Rheault
 8 having the knowledge, capability, authority and jurisdiction, discretion, and authority that any
 9 of the wrongs committed against the Plaintiffs that were done or that were to be done, as
 10 mentioned hereinafter, and having the power, knowledge, capability, authority and jurisdiction
 11 to stop, prevent, and correct the commission of same, neglected, refused, avoided, and/or did
 12 not act so to do.

13 29. Plaintiffs allege that Defendant Rheault is mandated to, among other things, guard,
 14 protect, preserve and embrace the safety, peaceful educational enjoyment and security of the
 15 Plaintiff Preschooler II, providing him with an education environment free from hostility,
 16 violence, reprisal, aversive interventions and corporal punishment and mental and verbal abuse,
 17 and Defendant Rheault failed to do so.

18 30. Plaintiffs allege that at all times mentioned herein the acts and omissions of Defendants
 19 Nevada, the State Board,, Rheault, as well as all other Defendants as alleged herein, failed to
 20 provide, implement and enforce a comprehensive and detailed statutory program for the
 21 protection of disabled students from educational abuse and harassment entitled "Use of Aversive
 22 Intervention, Physical Restraint and Mechanical Restraint on Pupils With Disabilities"(*N.R.S.*
 23 § 388.521 *et. seq.*)

24 31. Defendants State Board and Reault were to enact and implement and enforce a "model
 25 program of education" as specifically required by *N.R.S.* § 388.5285. Furthermore, said
 26 Defendants ratified the conduct, acts, usages, omissions, policies, customs and practices of the
 27 remaining Defendants who, among other things, failed to report to the Defendant Clark County

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1 School Board of Trustees (CCSD Board) within twenty four hours or as soon thereafter as
 2 discovered (*N.R.S.* § 388.5295), discipline (*N.R.S.* § 388.529) and correct by affirmative plan
 3 by the Defendants Superintendent Arturo Garcia (Garcia) , CCSD Board, and if deficient, the
 4 State Board (*N.R.S.* § 388.5295.2.3. and 4.)

5 32. "Aversive intervention" means any of the following actions if the action is used to
 6 punish a pupil with a disability or to eliminate, reduce or discourage maladaptive behavior of a
 7 pupil with a disability:

- 8 a. The use of noxious odors and tastes;
- 9 b. The use of water and other mists or sprays;
- 10 c. The use of blasts of air;
- 11 d. The use of corporal punishment;
- 12 e. The use of verbal and mental abuse;
- 13 f. The use of electric shock;
- 14 g. The administration of chemical restraint to a person;
- 15 h. The placement of a person alone in a room where release from the room is
 16 prohibited by a mechanism, including, without limitation, a lock, device or object positioned to
 17 hold the door closed or otherwise prevent the person from leaving the room;
- 18 i. Requiring a person to perform exercise under forced conditions if the:
 - 19 i. Person is required to perform the exercise because he exhibited a behavior
 20 that is related to his disability;
 - 21 ii. Exercise is harmful to the health of the person because of his disability;
 - 22 or
 - 23 iii. Nature of the person's disability prevents him from engaging in the
 24 exercise; or
 - 25 iv. The deprivation of necessities needed to sustain the health of a person,
 26 regardless of the length of the deprivation, including, without limitation,
 27 the denial or unreasonable delay in the provision of:

1 j. Food or liquid at a time when it is customarily served; or

2 k. Medication. (*N.R.S.* § 388.5215)

3 33. "Verbal and mental abuse" is defined as "actions or utterances that are intended to cause
4 and actually cause severe emotional distress to a person"(*N.R.S.* § 388.526)

5 34. "Corporal punishment" is defined as "the intentional infliction of physical pain,
6 including, without limitation, hitting, pinching or striking" (*N.R.S.* § 388.5225).

7 35. Plaintiffs allege that at all times mentioned herein Defendants Nevada, the State Board,
8 and Rheault created, established, enforced, implemented and administered a custom of practice
9 which, among other things,

10 a. Abdicated a statutory duty, after preparing a model program, to implement and
11 enforce a model program under *N.R.S.* § 388.5285.

12 b. Abdicated a statutory duty to implement and enforce reporting and a corrective
13 action plan under *N.R.S.* § 388.5295.1.2.3. and 4.

14 c. Failed to supervise, enforce and administer educational programs to prevent,
15 report and take corrective and disciplinary actions for aversive interventions involving disabled
16 students such as Plaintiff Preschooler II.

17 d. Abdicated their duty and care to implement the United States Congressional intent
18 to administer, implement, and establish a program for the disabled students, such as Plaintiff
19 Preschooler II free of oppression, physical and emotional abuse.

20 e. Abdicated their duty and care to implement an educational and scholastic
21 environment supporting the peaceful enjoyment, life and liberty and educational opportunity
22 for its disabled students, such as Plaintiff Preschooler II.

23 f. Deprived disabled autistic Preschooler II and students between the ages of three
24 (3) and five (5) years of age their Federal and State Constitutional rights; the peaceful enjoyment
25 of a free appropriate public education (**FAPE**); benefits, immunities, entitlements, services and
26 assistance otherwise afforded to non-disabled students.

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1 g. Deprived abused autistic students, such as Plaintiff Preschooler II, from an
 2 effective program of prevention, intervention, reporting, investigation and discipline of incidents
 3 of aversive intervention, corporal punishment, use of excessive force, emotional and verbal
 4 abuse.

5 h. Abdicated its statutory duty to enforce the laws protecting abuse of disabled,
 6 autistic children in its public schools.

7 36. Pursuant to the *N.R.S.* § 385.080, which pertinently states, "***The state board may adopt***
 8 ***regulations for its own government and as necessary for the execution of the powers and***
 9 ***duties conferred upon it by law,***' Plaintiffs allege that the Defendants Nevada, State Board, and
 10 Rheault were mandated to, among other things, guard, protect, preserve and embrace the safety,
 11 peaceful educational enjoyment and security of the Plaintiff Preschooler II, providing him with
 12 an education environment free from hostility, violence, reprisal, aversive interventions, corporal
 13 punishment, and verbal and mental abuse and the Defendants Nevada, State Board, and Rheault
 14 failed to do so.

15 37. The Plaintiffs allege that the acts, omissions, custom, usage and practice stated herein
 16 were performed and/or executed by Defendants Nevada, State Board, Rheault under color of law
 17 and authority.

18 38. Plaintiffs are informed and believe that at all times mentioned herein the Defendant
 19 CCSD Board was and continues to be statutorily mandated to provide free education and safety
 20 to its students. Hence, the Plaintiffs allege that in some manner the CCSD Board is and was at
 21 all times mentioned herein responsible for the acts, omissions, policies, practices, custom,
 22 implementation, and conduct committed by itself and the remaining Defendants.

23 39. Plaintiffs are informed and believe that at all times mentioned herein the Defendant
 24 CCSD Board is and continues to be a recipients of certain educational federal financial funds for
 25 disabled students, such as Plaintiff Preschooler II.

26 40. Plaintiffs are informed and believe that at all times mentioned herein Defendant Clark
 27 County School District hereinafter "District" was and continues to be statutorily authorized to

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1 organize, implement, enforce and be responsible, among other things, for the special education,
 2 safety, health, physical custody of disabled minor students between the ages of three (3) years
 3 of age and five (5) years of age at the Betsy Rhodes Elementary School, Kids Intensive Delivery
 4 of Services Programs (KIDS), located at 7350 Tealwood Street, City of Las Vegas, Clark
 5 County, State of Nevada.

6 41. Plaintiffs are informed and believe that at all times mentioned herein the Defendant
 7 District is and continues to be a recipient of certain educational federal financial funds for
 8 disabled students, such as Plaintiff Preschooler II. Furthermore, Defendant District is
 9 responsible to report and comply with *N.R.S. § 388.521 et. seq.* involving child abuse within
 10 the District.

11 42. Plaintiffs are informed and believe that at all times mentioned herein Defendant was and
 12 continues to be Superintendent of the Defendant District, among other things, responsible
 13 supervising, monitoring, administering and implementing special educational programs for the
 14 disabled students such as Plaintiff Preschooler II. Furthermore, Garcia is responsible to report
 15 and comply with *N.R.S. § 388.521 et. seq.* involving child abuse within the District.

16 43. Plaintiffs are informed and believe that at all times mentioned herein Defendant Charlene
 17 A. Green hereinafter "Green" was and continues to be the Associate Superintendent Student
 18 Support Services Division of the Defendant District, among other things, responsible for support
 19 of supervising, monitoring, administering and implementing special educational programs for
 20 the disabled students. Furthermore, Defendant Green is responsible to report and comply with
 21 *N.R.S. § 388.521 et. seq.* involving child abuse within the District.

22 44. Plaintiffs are informed and believe that at all times mentioned herein Defendant Michael
 23 S. Harley hereinafter "Harley" was and continues to be the Director of Compliance and
 24 Monitoring Officer of the Defendant District. Among other things, Defendant Harley is charged
 25 with the duty, care and statutory monitoring and compliance of programs for autistic and disabled
 26 students pursuant to § 504 of the **RA** and **IDEA**. Furthermore, Defendant Harley is responsible
 27 to report and comply with *N.R.S. § 388.521 et. seq.* involving child abuse within the District.

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1 45. Plaintiffs allege that Defendant Kay Davis, hereinafter "Davis", at all times mentioned
 2 herein was the employee and agent of the aforementioned defendants and was employed by the
 3 Defendant District as a Special Education Administrative Supervisor, among other things,
 4 responsible for supervising, monitoring, administering and implementing educational programs
 5 for the disabled students, including the individual IEP of Plaintiff Preschooler II. Furthermore,
 6 Defendant Davis is responsible to report and comply with *N.R.S. § 388.521 et. seq.* involving
 7 child abuse within the District.

8 46. Plaintiffs are informed and believe that at all times mentioned herein Defendant Darryl
 9 Wyatt hereinafter "Wyatt" was and continues to be Principal of the Betsy Rhodes Elementary
 10 School, among other things, responsible for supervising, monitoring, administering and
 11 implementing educational programs for the autistic students. Furthermore, Defendant Wyatt is
 12 responsible to report and comply with *N.R.S. § 388.521 et. seq.* involving child abuse within
 13 the District.

14 47. Plaintiffs are informed and believe that at all times mentioned herein the Defendants
 15 CCSD Board, District, Superintendent, Green, Harley, Davis and Wyatt (School District
 16 Administration Defendants) were and continue to be at times mentioned herein responsible for
 17 the training, supervision, discipline and monitoring of its teachers working, associates, affiliated
 18 and/or contracted to work at KIDS.

19 48. Plaintiffs allege that at all times mentioned herein the acts and omissions of the School
 20 District Administration Defendants ratified the conduct, acts, omissions, policies and practices
 21 of the each other and the remaining Defendants who, among other things, imposed aversive
 22 interventions, corporal punishment, and verbal and mental abuse on Plaintiff Preschooler
 23 II; deprived him of his Federal and State Constitutional rights; the peaceful enjoyment of a
 24 **FAPE**; benefits, immunities, entitlements, services and assistance otherwise afforded to non-
 25 disabled students.

26 49. Plaintiffs allege that at all times mentioned herein the School District Administration
 27 Defendants have created, established, enforced, implemented and administered a custom of

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1 practice and usage which, among other things,

2 a. Abdicated a statutory duty to implement and enforce a model program under
3 *N.R.S.* § 388.5285.

4 b. Abdicated a statutory duty to implement and enforce reporting and a corrective
5 action plan under *N.R.S.* § 388.5295.1.2 and 3.

6 c. Failed to supervise, enforce and administer educational programs to prevent,
7 report and take corrective and disciplinary actions for aversive interventions involving disabled
8 students such as Plaintiff Preschooler II.

9 d. Abdicated their duty and care to implement the United States Congressional
10 intent to administer, implement, and establish a program for the disabled students, such as
11 Plaintiff Preschooler II free of oppression, physical and emotional abuse.

12 e. Abdicated their duty and care to implement an educational and scholastic
13 environment supporting the peaceful enjoyment, life and liberty and educational opportunity
14 for its disabled students, such as Plaintiff Preschooler II.

15 f. Deprived disabled autistic Preschooler II students between the ages of three (3)
16 and five (5) years of age their Federal and State Constitutional rights; the peaceful enjoyment of
17 **FAPE**; benefits, immunities, entitlements, services and assistance otherwise afforded to non-
18 disabled students.

19 g. Deprived abused autistic students, such as Plaintiff Preschooler II, from an
20 effective program of prevention, intervention, reporting, investigation and discipline of incidents
21 of aversive intervention, corporal punishment, and verbal and mental abuse.

22 h. Abdicated its statutory duty to enforce the laws protecting abuse of autistic
23 children in its public schools.

24 50. Furthermore, the Plaintiffs allege that at all times mentioned herein the School District
25 Administration Defendants encouraged, ratified, supported, aided and inspired with act or
26 omission the practice of aversive interventions against disabled autistic Preschooler II by its
27 employees, teachers, educational contractors, educational sub-contractors, agents, representative

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1 and administrators and/or school districts personnel under its jurisdiction.

2 51. Plaintiffs are informed and believe that at all times mentioned herein the School District
3 Administration Defendants having the knowledge, capability, authority and jurisdiction that any
4 of the wrongs committed against the Plaintiffs that were done or that were to be done, as
5 mentioned hereinafter, and having the power, knowledge, capability, authority and jurisdiction
6 to stop, prevent, and correct the commission of same, neglected, refused, avoided, and/or did
7 not act to do so.

8 52. Plaintiffs allege that the School District Administration Defendants were mandated to,
9 among other things, guard, protect, preserve and embrace the safety, peaceful educational
10 enjoyment and security of the Plaintiff Preschooler II, providing him with an education
11 environment free from hostility, violence, reprisal and aversive interventions, and the CCSD
12 Board failed to do so.

13 53. Garcia, Green, Harley, Davis and Wyatt are being sued in their individual and official
14 capacity.

15 54. Plaintiffs allege that Defendant Kathleen LiSanti, hereinafter "LiSanti", at all times
16 mentioned herein was the representative, employee and agent of the aforementioned School
17 District Administration Defendants and acted under color of law, policy, custom, usage and
18 practice when she engaged in aversive intervention. Plaintiffs allege that Defendant LiSanti
19 imposed corporal punishment and the use of aversive interventions on Plaintiff Preschooler II.
20 Hence, depriving the Plaintiff Preschooler II, among other things, of a **FAPE**, an environment
21 free from violence, reprisal, and an education specifically geared toward his needs as an autistic
22 disabled Preschooler II.

23 55. LiSanti is sued in her individual and official capacity.

24 56. Plaintiffs allege that it is unlawful for any governmental authority, or any agent thereof,
25 or any person acting on behalf of a governmental authority, such as the aforementioned
26 Defendants, and each of them, to engage in a pattern or practice of conduct by officials or
27 employees of any governmental agency with responsibility for the administration,

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1 implementation, supervision and education of disabled and autistic students that deprives
 2 persons of rights, privileges, or immunities secured or protected by the Constitution or laws of
 3 the United States.

4 57. Plaintiffs are uncertain as to the identity and capacity of Does 1 through 10, and will
 5 move this Court for an order to amend this complaint once they has ascertained same. Plaintiff
 6 allege that the Does 1 through 10 defendants are equally and severely liable to the Plaintiffs for
 7 the conduct of the remaining defendants.

8 58. Plaintiffs allege herein that the training, supervision, discipline, and admonishment of
 9 the subordinate Defendants named herein, by Defendants State Board, CCSD Board, Rheault,
 10 District, Garcia, Green , Harley and Davis was at all times and/or in a manner relevant to this
 11 action inadequate to the tasks that said subordinate Defendants had to perform; that the
 12 inadequacy is the result of the Defendants State Board, CCSD Board and District's deliberate
 13 indifference; and that the inadequacy is and was at all times mentioned herein in some manner
 14 closely related to or actually caused the Plaintiffs' deprivations and injuries, as full stated herein.

15 ALLEGATIONS OF LAW AND EQUITY

16 59. All of the acts of Defendants, their officers, agents, servants, employees, or persons
 17 acting at their behest or direction, were done, and are continuing to be done, under the color and
 18 pretense of state law, including the ordinances, regulations, customs, policies, and usages of
 19 State and District.

20 60. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations
 21 of their federal and state rights by Defendants.

22 61. Unless and until the actions taken by Defendants, as described above and below, are
 23 subject to declaratory remedies and/or enjoined, Plaintiffs will suffer, and continue to suffer,
 24 irreparable injury to their federal and state constitutional rights.

25 62. Defendants have, and are, acting in conscious disregard, deliberate indifference, and/or
 26 gross misjudgment and in bad faith as to the rights of the Plaintiffs, creating educational
 27 harassment and a hostile environment, as herein alleged.

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**ETIOLOGY OF PLAINTIFF PRESCHOOLER II'S PATHOLOGY AND MEDICAL
DISABLING ALIMENTS RELEVANT TO THIS ACTION**

63. 06-30-1998 Plaintiff Preschooler II was seen at the Steinberg Diagnostic for an MRI of the brain. Plaintiff Jane Roe reports that Tuberous Sclerosis (TS) was confirmed.

64. 08-07-1998 Plaintiff Preschooler II was seen at the Southwest Medical for a kidney ultrasound.

65. 5-24 & 25-99 Plaintiff Preschooler II was hospitalized due to dehydration due to illness.

66. 01-01-1999 Plaintiff Preschooler II was seen at the Steinberg Diagnostics for an MRI of the brain. Plaintiff Jane Roe reports that more tubers were found since the previous MRI.

67. 12 - 1999 Plaintiff Preschooler II was hospitalized for four (4) days due to illness and dehydration.

68. 08 -2000 Plaintiff Preschooler II was seen by Dr. Katherine Sims, at MGH Neurogenetics DNA Diagnostic Lab.

69. 09 - 2000 Plaintiff Preschooler II was seen at the Southwest Medical for a kidney and liver ultrasounds.

70. 12-16-2001 Plaintiff Preschooler II was seen at Sunrise Children's Hospital, on two emergency room visits on due to seizures. After the 1st one at around 11:10 a.m. or so, he was not himself for quite a while after the seizure and appeared to have several little seizures as well. Plaintiff Preschooler II had a fever, and eventually, at the hospital, they gave him a fever reducer. His Tegretol level was 6.6 which is too low for him. He had two additional seizures while at the hospital in the afternoon, and was given Atifan, which made him so sleepy he would not wake up. Plaintiff Preschooler II was returned home and he is reported to have slept until approximately 9:26 p.m. Plaintiff Jane Roe reports that Plaintiff Preschooler II had another seizure beginning at about 9:27 p.m. The seizure lasted 12 minutes. She took Plaintiff Preschooler II back to the emergency room. Plaintiff Preschooler II was diagnosed with Strep Throat, and was a bit dehydrated. He was administered Amoxycillin and 500cc of liquid through an IV. Plaintiff Preschooler II was administered Motrin since the Tylenol given by his

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1 mother had no positive effect. Plaintiff Jane Roe reports that few days later, the nurse from
2 Sunrise called and said that they found a staph infection in the urine.

3 71. 01-13-2002 On this particular day, Plaintiff Jane Roe reports that while Plaintiff
4 Preschooler II was playing by a swing set in a backyard, he grabbed hold of the steel leg and then
5 let himself down to the ground. She observed him flopping over, and trying to get up. However,
6 she reports that his legs didn't seem to be working. She comments that this was the first time she
7 noticed an apparent seizure of this type.

8 72. 01-20-2002 While at Leid school playing on the gym equipment, Plaintiff Jane Roe
9 reports observing Plaintiff Preschooler II having trouble with his right leg strength. He appeared
10 hesitating to climb up some stairs. She comments that was just odd. She reports that Plaintiff
11 Preschooler II did not fall down and did hold on to a rail.

12 73. 02-06-2002 Plaintiff Jane Roe reports that Plaintiff Preschooler II had a seizure. He
13 was drooling while crying. She suspects that Plaintiff Preschooler II lost consciousness. She
14 reports that the seizure happened after his nightly dose of Tegretol - 10 ml.

15 74. 09-05-2002 Plaintiff Preschooler II was seen by Dr. Johanna S. Fricke at the University
16 of Nevada School of Medicine Department of Pediatrics. Dr. Fricke is reported to be a
17 behavioral analyst. Plaintiff Jane Roe indicates that she wanted Plaintiff Preschooler II to be
18 evaluated by Dr. Beasley, however, her waiting list was way too long. Plaintiff Jane Roe
19 indicates that Dr. Fricke performed a physical check up and was going to speak with Dr. Johns
20 about a behavioral medicine. However, Plaintiff Jane Roe reports that she opted not to go with
21 medicine as she did not think Plaintiff Preschooler II's behavior justified use of medicine at this
22 time. Plaintiff Jane Roe also comments that she felt Dr. Fricke aggravated Plaintiff Preschooler
23 II's mood rather than improved it. The Tegretol increased to 12.5 ml

24 75. 09-09-2002 Plaintiff Preschooler II was seen by Dr. William Evans at the Children's
25 Heart Center, for a heart ultrasound.

26 76. 10-07-2002 Plaintiff Preschooler II was seen at the Steinberg Diagnostics for an MRI
27 of the brain.

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1 77. 10-16-2002 Plaintiff Jane Roe reports that Plaintiff Preschooler II had seizures at
 2 school. Stiffening, he seemed a bit sick, and was very tired after the seizures, but then at night,
 3 he was all perky again. So, she gave him 12.5 cc instead of 10cc at 4:00 p.m. He reports that
 4 she had missed his night dosage because he went to sleep just after 8:00 p.m., and then in the
 5 morning, about 6:30, she reports of giving Plaintiff Preschooler II the 12.5 cc again.

6 78. 10-28-2002 Jane Roe reports that Plaintiff Preschooler II had another seizure at school.
 7 Started with him crying a whole bunch, and then he got a horrified look on his face, and then
 8 started breathing badly and coughing. She reports that the school faculty told her Plaintiff
 9 Preschooler II couldn't catch his breath, but the coughing helped him breathe. Plaintiff Jane Roe
 10 was also told that Plaintiff Preschooler II was observed forcefully banging his head against the
 11 person who was holding him. And, he had started falling maybe before he started crying - she
 12 was not sure, but he also was shaking and shivering, per the school faculty. She also indicates
 13 that the Plaintiff Preschooler II was observed doing something with his mouth before the seizure.
 14 She reports that the duration of the seizure was approximately forty (40) minutes. Plaintiff
 15 Preschooler II mother reports that he could not go to sleep and that she did not observe him
 16 napping during the day. She reports that Plaintiff Preschooler II complained of stomach pain
 17 before he was put to bed, and wanted to lay on his "belly" on her lap. She recalls that the same
 18 thing happened at the school that day.

19 79. 10-29-2002 School called. Plaintiff Preschooler II sleeping and hard to wake up, and
 20 even when on playground, he was groggy.

21 80. 10-31-2002 Plaintiff Preschooler II's father said that a few weeks ago, Plaintiff
 22 Preschooler II had a seizure that didn't last long.

23 85. 11-14-2002 Plaintiff Preschooler II is reported to have suffered a seizure. However,
 24 his mother reports that "Didn't last as long as the last one." She described the following,
 25 "Plaintiff Preschooler II yelled, coughed, had irregular breathing and went over on his stomach.
 26 Was lethargic for a few minutes afterwards, but recovered. Nurse didn't see it, and class hasn't
 27 discovered a reason for it to happen. We didn't miss a dose this time, and it happened."

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1 86. Plaintiff Preschooler II was seen at Neurology Associates, due to Betsy Rhodes
 2 nurse's concerns about Plaintiff Preschooler II's sleepiness. Plaintiff Jane Roe reports that
 3 Plaintiff Preschooler II's treating physician tried to reduce the Tegretol levels. They were
 4 reduced to 10 ml, which she claims wasn't enough. She also reports that the physician raised the
 5 Tegretol to 11 ml. Dr. Johns' records will show what we did. Decrease to 10 ml then increase
 6 to 11 ml.

7 87. 05-13-2003 Mother reports that Plaintiff Preschooler II was taken by ambulance to
 8 UMC due to what she describes as a grand mal seizure. She reports that drooling was also
 9 observed during this episode.

10 88. 07-06- 2003 Mother reports Plaintiff Preschooler II suffered what appears to be a
 11 grand mal seizure.

12 89. Summer 2003 Plaintiff Preschooler II was seen at the Southwest Medical for a chest
 13 X-Ray. On various dates Plaintiff Preschooler II was seen at Children's Heart Center for
 14 ultrasounds, EKG, Holter Monitoring due to the presence of tubers and irregular heart beat.

15 **EVENTS AND INCIDENTS RELEVANT TO THIS ACTION**

16 90. Plaintiff Preschooler II was at all times mentioned herein a four year old autistic child
 17 with TS who attended Betsy Rhodes Elementary School, located in Las Vegas, Nevada, during
 18 the 2002-2003 academic school year.

19 91. Plaintiff Preschooler II was born in Las Vegas, Nevada on June 3, 1998.

20 92. On or about May 9, 2001 a Multidisciplinary Team Report (hereinafter "MDT") was
 21 conducted on Plaintiff Preschooler II's behalf. Respondent deemed Plaintiff Preschooler II
 22 eligible to receive special education services under the primary category of health impairment
 23 other than orthopedic. Autism was determined a secondary eligibility.

24 93. At all times mentioned herein, Plaintiff Preschooler II was classified, categorized,
 25 diagnosed and accepted as a Preschooler II with disabilities under the category of health
 26 impairment other than orthopedic.

27 94. Other health impaired is defined under the *N.A.C.* § 388.046 as:

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1 a. Health impairment that limits the strength, vitality or alertness of the pupil,
 2 including, without limitation, a heightened alertness to environmental stimuli which results in
 3 limited alertness with respect to the educational environment and which:

4 b. Is caused by chronic or acute health problems such as asthma, attention deficit
 5 disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes,
 6 epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever,
 7 Rett's disorder and sickle-cell anemia; and

8 c. Adversely affects the educational performance of the pupil.

9 95. Plaintiff Preschooler II suffers from tuberous sclerosis (TS), a disorder which is
 10 accompanied by autism.

11 96. Autism is defined under the *N.A.C.* § 388.028 as:

12 d. Significantly affects the verbal and nonverbal communication and social skills
 13 of a person and is often characterized by repetitive activities and stereotyped movements,
 14 resistance to changes in environment or daily routine and responding to sensory experiences in
 15 an unusual manner,

16 e. Is usually apparent before the age of three (3) years, and

17 f. Adversely affects the educational performance of a pupil causing significant
 18 delays or irregular patten in learning, or both.

19 97. Plaintiff Preschooler II suffers from a seizure disorder related to his tuberous sclerosis
 20 (TS) disorder.

21 98. Defendants were aware of Plaintiff Preschooler II's medical condition including his
 22 seizure disorder and frequent seizure episodes.

23 99. On or about August 29, 2002, Plaintiff Preschooler II was four years old and three
 24 months.

25 100. On or about August 29, 2002, Plaintiff Preschooler II enrolled at Betsy Rhodes
 26 Elementary School located at 7350 Tealwood Street, Las Vegas, Nevada 89131 in the Kids
 27 Intensive Delivery of Services Program (hereinafter "KIDS" program). The KIDS program is

1 a full-day in-school classroom program for autistic children between the ages of three and five
2 years old.

3 101. At the time of enrollment August 29, 2002, Plaintiff Preschooler II exhibited no
4 aggressive behaviors that impeded his learning.

5 102. Plaintiffs allege as established by independent eyewitness sworn testimony at Plaintiffs'
6 due process hearing, that on or about September 27th, 2002, school aide Peggy Cravish grabbed
7 Plaintiff Preschooler II's classmate by the right arm in a twisting fashion with sufficient force
8 to cause bodily injury and thrown two and a half (2 ½) feet.

9 103. Defendants State, Garcia and Wyatt were informed on or about September 30, 2002 and
10 contemporaneously served with written and/or e-mail confirmation by parent eyewitnesses of a
11 classmate of Preschooler II, Mr. And Mrs. S., regarding said violent and unprovoked assault on
12 Preschooler II's classmate.

13 104. Mr. And Mrs. S. described that school aide Cravish violently grabbed Plaintiff
14 Preschooler II's classmate, twisted his right arm, causing his body to flex in a painful manner,
15 lifting him from his statutory sitting position then violently throwing him approximately two and
16 a half (2 ½) feet towards the wall.

17 105. As a consequence of witnessing the hostile and violent environment in the KIDS
18 classroom, Mr. and Mrs. S. immediately removed their own child from the KIDS program at
19 Betsy Rhodes Elementary School.

20 106. Plaintiffs assert that Defendants State, Garcia and Wyatt were bound by *N.R.S.* §
21 388.521 *et. seq* to report to the Defendant CCSD Board of Trustees not later than 24 hours or
22 soon thereafter as the assault and battery constituting aversive intervention is discovered and
23 failed to do so.

24 107. On October 31, 2002 an Individualized Educational Plan (hereinafter "IEP") was
25 conducted at Betsy Rhodes Elementary School on behalf of Plaintiff Preschooler II due to his
26 dramatic regression concerning aggressive behaviors that impeded Plaintiff Preschooler II's
27 learning.

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1 108. After two months of enrollment at the KIDS program, Plaintiff Preschooler II was
 2 exhibiting aggressive behaviors including: (1) hitting, (2) biting and (3) kicking. The behaviors
 3 previously mentioned were not observed prior to enrollment.

4 109. As a result of Plaintiff Preschooler II's increased aggression that impeded his learning,
 5 Defendants granted supplementary supports and services that included an intensive home
 6 behavioral intervention program consisting of monthly workshops and 20 hours of 1:1 tutoring.

7 110. Plaintiffs allege that the District agreed to only twenty (20) hours per week of intensive
 8 1:1 behavioral intervention, which the Plaintiffs allege that Defendant District's actions were
 9 unconscionable and fell below the standard of care involving disabled and/or autistic Preschooler
 10 II and those similarly situated.

11 111. Plaintiffs allege that Defendants did not provide Plaintiff Preschooler II with positive
 12 methods of behavioral supports as required pursuant to *Title 20 United States Code* §
 13 1414(d)(3)(B)(i); *N.A.C.* § 388.284(3)(C)(1)(2).

14 112. Plaintiffs allege that on or about the month of October 2002, Plaintiff Preschooler II
 15 sustained suspicious bruising to the inner thigh regions in addition to a thick fingernail scratch
 16 to his neck region.

17 113. In or about October/November of 2002, art teacher Patricia Been hereinafter "Been"
 18 witnessed Defendant LiSanti screaming at the children in Plaintiff Preschooler II's classroom
 19 in an aggressive and alarming manner sufficient to cause concern by Been for the children's
 20 welfare which she reported to her supervisor at the District and the Low Incidence Team of the
 21 Defendant's district.

22 114. Plaintiffs assert that Defendant District was bound by *N.R.S.* § 388.521 et. seq. to report
 23 to the Defendant CCSD Board of Trustees not later than 24 hours or as soon thereafter as the
 24 aversive intervention constituting verbal and mental abuse is discovered and failed to do so.

25 115. On or about January 3 to 5, 2003, Plaintiff Preschooler II's initial Lovaas Institute For
 26 Early-Intervention hereinafter "LIFE" workshop was conducted. The LIFE consultant, Shawn
 27 Regnier recommended 35-40 hours per week of intensive 1:1 behavioral intervention.

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1 116. Plaintiffs allege that Defendants failed to provide appropriate supplementary supports
 2 and services to Plaintiff Preschooler II due to their refusal to provide 35-40 hours of 1:1 intensive
 3 home tutoring as recommended by District's approved provider LIFE.

4 117. Plaintiffs allege that the District rejected, ignored and discounted the written
 5 recommendations of LIFE and Regnier, LIFE consultant, despite the fact that Regnier's services
 6 were reimbursed by the District. Hence, the Plaintiffs allege that the District deprived Plaintiff
 7 Preschooler II of an appropriate prospective educational benefit that was meaningful.

8 118. Plaintiffs allege on or about the month of January 2002, as testified under oath at Plaintiff
 9 Preschooler II's due process hearing, that Plaintiff Preschooler II was required to walk without
 10 shoes across the asphalt on four (4) separate occasions as an aversive behavioral intervention
 11 violating Clark County School District Regulations and *N.R.S.* § 388.5295 and exposing Plaintiff
 12 Preschooler II to serious physical and emotional trauma. Autistic children are hyper-sensitive
 13 to such and active stimulate.

14 119. Plaintiffs allege, as testified under oath, that defendant Wyatt had knowledge of the
 15 violation but failed to report it pursuant to *N.R.S.* § 388.521.

16 120. Plaintiffs allege that Defendant Wyatt was bound by statute to complete a *N.R.S.* §
 17 388.521 *et. seq.* report to Defendant CCSD Board of Trustees within twenty-four (24) hours, or
 18 as soon thereafter, becoming aware that the aforementioned aversive intervention constituting
 19 child endangerment occurred and failed to do so.

20 121. Plaintiffs allege that on or about the month of March 2003, teacher Been witnessed
 21 Defendant LiSanti assault and batter Plaintiff Preschooler II's classmate, in Plaintiff Preschooler
 22 II's presence, by grabbing both wrists and violently and forcefully causing him to repeatedly
 23 strike himself about the face and head approximately ten (10) to twelve (12) times. Been
 24 reported said incident to District personnel, including Defendant Wyatt on or about March 30,
 25 2003.

26 122. Plaintiffs assert that Defendant Wyatt was bound by statute to complete a *N.R.S.* §
 27 388.521 *et. seq.* report to Defendant CCSD Board of Trustees within twenty four (24) hours, or

1 as soon thereafter, becoming aware that the aforementioned aversive intervention constituting
2 assault and battery occurred and failed to do so.

3 123. Plaintiffs allege, as testified under oath by Defendant Wyatt, that Plaintiff Preschooler
4 II was also assaulted by Defendant LiSanti.

5 124. Plaintiffs allege, as testified under oath by Defendant Wyatt, that Defendant LiSanti's
6 assault was aversive enough to require compliance with *N.R.S.* § 388.521 *et. seq.*

7 125. Plaintiffs allege, as testified under oath, that on or about the month of March 2003,
8 Plaintiff Preschooler II was assaulted at circle time by Defendant LiSanti, when Defendant
9 LiSanti grabbed Plaintiff Preschooler II's hands and slapped him repeatedly while telling him
10 "not to do this."

11 126. Plaintiffs allege, as testified under oath by Kathy DiSario and substantiated by other
12 witnesses that Defendant LiSanti apologized for this assault and battery of Plaintiff Preschooler
13 II.

14 127. Plaintiffs allege, as testified under oath by Kathy DeSario, that Defendant Wyatt was
15 notified of the aversive intervention.

16 128. Plaintiffs assert that Defendant Wyatt was bound by statute to complete a *N.R.S.* §
17 388.521 *et. seq.* report to Defendant CCSD Board of Trustees within twenty four (24) hours, or
18 as soon thereafter, becoming aware that the aforementioned aversive intervention consisting of
19 assault and battery occurred but failed to do so.

20 129. Plaintiffs allege on or about March 17, 2003, as testified under oath by Kathy DeSario,
21 that Defendant LiSanti employed an aversive behavior intervention on Plaintiff Preschooler II's
22 classmate by pulling his hair to require him to follow instructions.

23 130. Plaintiffs allege on that same date, March 17, 2003, as testified under oath by Plaintiff
24 Jane Roe, Defendant LiSanti documented in writing noticeable bruising to Plaintiff Preschooler
25 II's arm areas.

26 131. Plaintiffs allege, as testified by Detective Loren Johnson, that Defendant LiSanti
27 slammed Plaintiff Preschooler II in a chair as an aversive intervention.

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1 132. Plaintiffs allege, as testified by Mr. and Mrs. S., that Plaintiff Preschooler II's classmate
2 sustained unusual bruising to the buttock and tailbone region.

3 133. Plaintiffs allege, and as testified at Plaintiffs due process hearing, that Plaintiff
4 Preschooler II sustained unusual bruising to the inner thigh regions.

5 134. On or about April 2, 2003, an IEP was conducted at Betsy Rhodes Elementary School
6 on Plaintiff Preschooler II's behalf. Defendant Wyatt was present.

7 135. Plaintiffs assert that Defendant Wyatt failed to notify Plaintiff Jane Roe of any of the
8 aforementioned abuse that Plaintiff Preschooler II had been subjected to, reported to and failed
9 to disclose it to Plaintiff Jane Roe during this April 2, 2003 IEP meeting.

10 136. At the IEP, Plaintiff Jane Roe requested additional home intervention hours to address
11 Plaintiff Preschooler II's regression regarding inappropriate violent behaviors and to comply with
12 LIFE's recommendations.

13 137. Defendant Wyatt failed to inform Plaintiff Jane Roe of the abuse at the hands of
14 Defendant LiSanti thus depriving her of meaningfully participating in the IEP.

15 138. On April 3, 2003, Plaintiff Jane Roe was notified by Defendant Wyatt that an allegation
16 of child abuse by Defendant LiSanti involved her child, Plaintiff Preschooler II. In addition,
17 Defendant Wyatt notified Plaintiff Jane Roe that the allegation was pending investigation.
18 Furthermore, Defendant Wyatt failed to inform Plaintiff Jane Roe of the earlier assaults and
19 batteries that had taken place including the required walks across the asphalt without protective
20 foot covering.

21 139. Plaintiffs are informed and believes that Defendants State, Garcia and Wyatt were bound
22 by *N.R.S. § 388.521 et. seq.* to file a report, correct and discipline, but failed, refused, and
23 omitted to do so, depriving Plaintiffs of their statutory rights to a timely investigate, address,
24 correct, discipline and prevent future aversive interventions.

25 140. On or about April 15, 2003, Defendant Wyatt notified Plaintiff Jane Roe that the
26 investigation was complete. A determination had been reached that Defendant LiSanti's
27 techniques were improper but not criminal.

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1 141. Plaintiff Jane Roe was concerned that a hostile, physically abusive

2 environment had been created by Defendant LiSanti and requested an educational change of
3 placement. Plaintiff Preschooler II was placed at another elementary school located in the
4 Northwest Region within CCSD's geographical boundaries.

5 142. On June 17, 2003, Plaintiffs requested an impartial due process administrative hearing
6 to adjudicate whether or not Defendants CCSD Board District, Garcia, Green, Harley and Wyatt
7 had complied with *N.R.S.* § 388.521 *et. seq.* and other procedural and substantive matters
8 including, but not limited to, deprivation of FAPE.

9 143. On or about June 22, 2003, Defendant State received notice of Plaintiffs' allegations and
10 appointed Ann Padover, PhD, whom Defendant State appoints, employs, trains and supervises,
11 to preside as the administrative hearing officer.

12 144. On July 17, 2003, Plaintiffs agreed to participate in a voluntary, non-binding mediation
13 conference. The parties were unsuccessful at reaching an agreement.

14 145. On or about August 15, 2003, Defendant District submitted a proposed settlement
15 agreement, including but not limited to, offering Plaintiff Preschooler II 60 hours of tutor hours
16 as compensatory education to resolve the dispute. Plaintiffs refused the offer and the parties
17 prepared for hearing.

18 146. On or about August 21, 2003, Plaintiffs counsel requested a lawful subpoena for
19 Detective Loren Johnson's notes and records regarding the investigation regarding the alleged
20 abuse against Plaintiff Preschooler II. Defendant District did not oppose Plaintiffs' counsel
21 subpoena.

22 147. On August 25, 2003, Defendant District submitted a Brief in Opposition to the
23 Applicability of *N.R.S.* § 388.521 *et. seq.* regarding its application and relevance under the
24 IDEA. Plaintiffs responded August 26, 2003.

25 148. On August 26, 2003, Hearing Officer Padover, that was appointed, employed, trained
26 and supervised by Defendant State adjudicated that *N.R.S.* § 388.521 *et. seq.* did not apply to
27 IDEA and its regulations. Plaintiffs counsel was specifically precluded from questioning

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1 witnesses as to any failures to report and comply with the use of aversive interventions
2 according to state statute.

3 149. On August 26, 27 and September 2, 3, 4, 2003 an administrative hearing was conducted
4 in Las Vegas, Nevada.

5 150. During the administrative hearing, Hearing Officer Padover refused Plaintiffs counsel
6 request to review Detective Johnson's notes as he refreshed his recollection while testifying.
7 Plaintiffs counsel was refused permission to inspect the notes/records despite being lawfully
8 subpoenaed.

9 151. Hearing Officer Padover who was appointed, employed, trained and supervised by
10 Defendant State ordered prior to direct examination Plaintiffs counsel to submit, questions
11 anticipated for Detective Johnson and removed certain questions from Plaintiffs counsel's list
12 regarding failures to comply with *N.R.S.* § 388.521 et. seq.

13 152. On October 10, 2003, Hearing Officer Padover ordered the following relief: "1 hour for
14 each 1 hour of instruction for the days from the first day of 2002/2003 school year that petitioner
15 began attending the School component until the Teacher returned from the Absence."

16 153. Hearing Officer Padover instructed that those hours were to be calculated by multiplying
17 each instructional day (based upon the school calendar) from the beginning of the 2002/2003
18 school year, by 6 hours and ten minutes.

19 154. Hearing Officer ordered Defendant District to calculate those hours accordingly and
20 provide the exact number to Plaintiffs within ten business days of the receipt of her decision.

21 155. On October 24, 2003, Plaintiffs timely appealed the decision of Hearing Officer
22 Padover. Defendant District did not cross appeal.

23 156. Defendant District failed to comply with Hearing Officer Padover's order instructing
24 calculation of the compensatory relief awarded to Plaintiff within ten days of the receipt of the
25 due process decision.

26 157. On or about November 11, 2003, Defendant State appointed Joyce O. Eckrem, Esq. as
27 the State Review Officer (hereinafter "SRO") to review Hearing Officer Padover's decision. A

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1 case conference was conducted on or about November 20, 2003.

2 158. On or about November 19, 2003, Defendant District offered Plaintiffs a settlement
3 articulating Hearing Officer Padover's order dated October 10, 2003 awarding 226 hours of
4 compensatory education by calculating 37 days x. 6.10 hours. Plaintiffs refused the settlement
5 proposal.

6 159. On or about November 20, 2003, Plaintiffs counsel requested inspection of Detective
7 Johnson's notes and records that had been previously denied counsel at the administrative
8 hearing level even though lawfully subpoenaed and not objected to by defendant District.

9 160. On or about November 26, 2003, Petitioner's counsel submitted written arguments to
10 include Detective Johnson's notes as additional evidence pursuant to *Title 34 Code of Federal*
11 *Regulations* § 300.565.

12 161. SRO Eckrem, adjudicated the release of Detective Johnson's report to
13 Plaintiffs' counsel. On January 14, 2004, defendant District made no objection to the release.

14 162. On or about January 16, 2004, Plaintiffs counsel reviewed detective Johnson's written
15 report that was lawfully subpoenaed on August 21, 2003 and discovered the reference to
16 recorded interviews with several witnesses regarding the investigation including due process
17 witnesses: Darryl Wyatt, Kay Davis, Lynette Lofgren, Erika Few, Patricia Been, Kathy DeSario
18 and Kathy LiSanti.

19 163. On January 29, 2004, Plaintiffs' counsel submitted written arguments requesting the
20 release of this tangible evidence withheld to Plaintiffs at the administrative hearing level.

21 164. On February 2, 2004, SRO Eckrem who was appointed, employed, trained and
22 supervised by Defendant State denied Plaintiffs counsel the right to inspect the tangible evidence
23 of recorded statements of witnesses at the due process hearing.

24 165. On February 23, 2004, SRO Eckrem issued a final decision adjudicating that Defendant
25 District failed to provide Plaintiff Preschooler II FAPE in that Defendant District failed to
26 comply with behavioral management in accordance with the *Nevada Administrative Code*.

27 166. SRO Eckrem who was appointed, employed, trained and supervised by Defendant State

1 adjudicated NRS 388. 521 et. seq. is a “state standard that a hearing officer must consider when
2 addressing the issue of FAPE” (Decision SRO, p. 17).

3 167. SRO Eckrem who was appointed, employed, trained and supervised by Defendant State,
4 then determined that hearing officers have no authority to ensure that local school districts and
5 state educational agencies follow *generally* the statutes of the state, including NRS 388.521, but
6 evidence of aversive interventions could be a denial of FAPE if there is a “nexus between the
7 prohibited intervention and either a serious infringement on the parent’s opportunity to
8 participate in the IEP process or the student’s inability to benefit from his or her education.”
9 (SRO Decision, p. 19):

10 a) The original hearing officer, Padover, found credible
11 evidence of aversive interventions with respect to Plaintiff
12 Preschooler II by on four occasions requiring Plaintiff
13 Preschooler II to walk across the playground barefoot,
14 contrary to Clark County School District regulations that
15 at all times students must wear protective foot covering
16 (CCSD regulations IV(A), Hearing Exhibit P204).

17 b) It was also found by the hearing officer, Padover, who
18 took the testimony of a number of witnesses “in several
19 instances when a student, sometimes the Petitioner
20 (Preschooler II) was self-stimulating by slapping himself
21 on the face the teacher was described by various witnesses
22 as overcorrecting the behavior by holding their hands and
23 ‘slapping’ their face with verbal instruction ‘not to do
24 this.’

25 c) The SRO Eckrem affirmed these aversive interventions
26 and the findings and that they were deemed inappropriate
27 (SRO decision, page 36, footnotes 31-32).

d) SRO Eckrem having recognized aversive interventions found that aversive interventions were a denial of FAPE and the non-disclosure seriously infringed on the parents' participation and the IEP process and further found an additional (but unnecessary) violation of FAPE in that the IEP was not designed to meet Plaintiff Preschooler II's specific behavioral needs, i.e., his increasing violent behaviors.

168. Having made these specific findings as a matter of law and fact, SRO Eckrem unaccountably and in contradiction to her own earlier findings, failed to find a per se violation of NRS 388.521 noting:

"The SRO is not approving of the use of such [aversive] techniques with children. Indeed, the SRO has noted above that had parents been aware of their right to participate in establishing the methods of intervention, these interventions may not have been used at all." (SRO decision at page 51)

169. SRO Eckrem upheld the administrative relief previously adjudicated and additionally awarded data collection on Plaintiff Preschooler II's behaviors that impede his school learning and if those behaviors are determined to impede learning, awarded, an additional thirty (30) minutes per week of intensive home behavioral intervention.

FIRST CAUSE OF ACTION

PETITION FOR DE NOVO JUDICIAL REVIEW; DECLARATORY AND EQUITABLE RELIEF; ATTORNEYS FEES

I

FACTS RELEVANT TO THIS PETITION

170. Plaintiffs incorporate herein by reference, as though fully stated herein all the above referenced allegations.

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171. Plaintiffs seeks judicial de novo review of the State of Nevada Hearing Officer's and the State of Nevada Reviewing Officer's decisions, as fully stated herein.

II

A. District Court has Jurisdiction to adjudicate this matter De Novo

172. The district court had subject matter jurisdiction under *Title 28 United States Code* § 1331 and *Title 20 United States Code* § 1415(e)(2), (e)(4) because this case arose under the Individuals with Disabilities Education Act, *Title 20 United States Code* § 1400 et seq. We have jurisdiction under *Title 28 United States Code* § 1291.

173. Any party aggrieved by the result of the administrative proceedings in the state system has the right, under *Title 20 United States Code* § 1415(I)(2), to bring a civil action in the district court, and

In any action brought under this paragraph, the court—

(i) shall receive the records of the administrative proceedings;
 (ii) shall hear additional evidence at the request of a party; and
 (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

174. Plaintiffs, seek to invoke the stay-put provision of IDEA at *Title 20 United States Code* § 1415(j), and to establish Plaintiff Preschooler II's current educational placement. The Act's stay-put provision provides in relevant part that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child." *Title 20 United States Code* § 1415(j). "This provision is, in effect, an automatic preliminary injunction." *Zvi D. v. Ambach*, 694 F.2d 904, 906 (2nd Cir. 1982).

175. Plaintiffs allege that the Defendants have established a custom, usage, and practice that undermines the provisions of *N.R.S.* § 388.529 and *N.R.S.* § 388.5295 enacted to protect disabled and autistic students. In failing to report the abuses stated above, the Defendants had in effect created a de facto discriminatory custom, usage and practice which treats non-disabled

1 students reporting abuse procedure differently than disabled and autistic students. *Ergo*,
 2 depriving the disabled and autistic student of the Equal Protection guarantees under the
 3 Fourteenth Amendment, by treating them with deprived and/or deliberate indifference.

4 176. Furthermore, Plaintiffs allege that the State and School Administration Defendants are
 5 recipients of federal subsidies pursuant to **Title 42 United States Code** § 5106, and that pursuant
 6 to § 5106c *et seq*, said Defendants are bound by federal law to investigation and prosecution
 7 cases of child abuse and neglect, such in this instance. However, Plaintiffs allege that said
 8 Defendants have and continue to enjoy the benefits of such financial subsidy without enforcing
 9 its mandates.

10 177. Plaintiffs allege that all of the acts of Defendants, their officers, agents, servants,
 11 employees, or persons acting at their behest or direction, were done, and are continuing to be
 12 done, under the color and pretense of state law, including the ordinances, regulations, customs,
 13 policies, and usages of State, State Board, CCSD Board and District.

14 178. Plaintiffs are informed and believe that the Defendants were and continue to be, at
 15 all times mentioned herein recipients of certain federal funds for the ADA, RA and IDEA.

16 179. Plaintiffs are informed and belief that the Defendants were at all times mentioned herein
 17 mandated to create, implement, administer, protect the due process and guarantee equal
 18 protection under both the **Fourth** and **Fourteenth Amendments** to the United States Constitution
 19 of their disabled students, who are also recipients of said funding.

20 180. Plaintiffs are informed and believe that the Defendants used said funding to organize,
 21 establish, supervised and implement the following, but not limited programs, services,
 22 entitlements and benefits:

- 23 a. Individual Education Programs.
- 24 b. Special Education Programs and Services, including and not limited to:
 - 25 i. Evaluation of the disabled student by the Multi disciplinary Team.
 - 26 ii. Evaluation by professionals in the fields or speciality of (a) autism, (b)
 - 27 speech pathology; (c) classroom and home assessments; (d) methodology assessment in

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1 implementing the recommendations of said professionals; (e) effective autism treatment; (f) data
 2 accumulation and analysis to design an education in-school and/or home behavior plan by
 3 engaging the services of Lovaas Institute for Early - intervention, and other services.

4 iii. Implementation of other programs and/or services, such as, but not limited
 5 to:

6 (1) The Kids Intensive Delivery of Services program.

7 (2) Enforcement of mandatory reports of child abuse and neglect

8 pursuant to the *N.R.S.* § 388.521 *et seq.*

9
 10 c. Due Process hearing, should a conflict arise.

11 d. Access and redress to either the Superior Court of the State of Nevada or the
 12 United States District Courts should a disagreement arise in the adjudication of issues at the Due
 13 Process hearing.

14
 15 e. Declaratory and Injunctive Relief.

16 f. Award of attorney(s) fees and costs.

17 181. Plaintiffs contend that the State of Nevada legislature has implemented and mandates a
 18 higher standard of care, accountability and culpability in the creation, organization and
 19 implementation of the **IDEA**, then it is proscribed by federal statutes.

20
 21 182. The Plaintiffs are informed and believe that once Plaintiff Preschooler II was accepted
 22 to participate in the aforementioned programs and/or services, they became also recipients of the
 23 federal financial and educational funding. Therefore, the Plaintiffs became parties to and entitled
 24 to enforce the contract between the Defendants and the federal agenc(ies) providing said
 25 financial and education funding.
 26
 27

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1 183. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations
2 of their federal and state rights by Defendants.

3 184 Unless and until the actions taken by Defendants, as described above and below, are
4 enjoined, Plaintiffs will suffer, and continue to suffer, irreparable injury to their federal and state
5 constitutional rights. Defendants have, and are, acting in conscious disregard of the rights of the
6 Plaintiffs.
7

8 185. Plaintiffs allege that pursuant to the **IDEA**, federal courts reviewing state administrative
9 proceedings are, among other things, to ". . . *receive the records of the administrative*
10 *proceedings . . .*" (*Title 20 United States Code* § 1415(i)(2)(B)) ". . . *hear additional evidence*
11 *at the request of a party . . .*" (*Id*) and ". . . *grant such relief as the court determines is*
12 *appropriate . . .*" (*Id*) based on a preponderance of the evidence.. Thus, Plaintiffs allege that the
13 United States Congress intended ". . . *judicial review in IDEA cases [to] differ substantially*
14 *from judicial review of other agency actions, in which courts generally are confined to the*
15 *administrative record and are held to a highly deferential standard of review.*" (*Ojai Unified*
16 *Sch. Dist. v. Jackson*, (9th Cir. 1993) 4 F.3d 1467, 1471).
17
18

19 186. Plaintiff Jane Roe further alleges that at the administrative process she was told that the
20 mandatory reporting requirements pursuant to the *N.R.S.* § 388.521 et. seq., were inapplicable
21 to the **IDEA**. The administrative officers ruled that they had no jurisdiction to generally
22 adjudicate the issue of enforcement of NRS 388.521 et. seq.
23

24 187. Plaintiffs contend that *N.R.S.* § 388.521 et. seq., is a protective and cautionary,
25 significant and relevant extension of the **IDEA** since the State of Nevada Legislature
26
27

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1 incorporated in **IDEA** with a higher standard of accountability, procedural mandates and
 2 culpability then its federal counterpart. Therefore, *N.R.S.* § 388.521 et. seq., must be enforced
 3 as part of the **IDEA** and is not at the discretionary power or outside the jurisdiction of the
 4 Defendants. Therefore, the Plaintiffs seek an order from this Court to so declare, as fully
 5 sought, herein.

7 188. Plaintiffs allege that IEPs were convened at the school site relative to Plaintiff
 8 Preschooler II. The IEP failed to comply with mandatory federal and state procedural guidelines
 9 in regard to formation and content pursuant to *Title 34 Code of Federal Regulations* §§ 300.26
 10 and 300.347 as amended in 1999 that qualified Plaintiff Preschooler II for special education
 11 under the category of autism and failing to plan, provide and implement a substantially
 12 appropriate and substantively and procedurally correct IEP and services pursuant to *Title 34*
 13 *Code of Federal Regulations* §§ 300.26 and 300.340-300.347 as amended in 1999.

16 189. Furthermore, the Plaintiffs allege that the IEPs failed to provide Plaintiff Preschooler II
 17 a full and appropriate educational opportunity with appropriate special education support and
 18 services pursuant to *Title 20 United States Code* §§ 1412 and 1414; and *Title 34 Code of*
 19 *Federal Regulations* § 300.304.

21 190. Moreover, the Plaintiffs allege that the IEPs failed to follow the mandated placement
 22 procedures pursuant to *Title 34 Code of Federal Regulations* §300.535

24 191. Additionally, the Plaintiffs allege that the IEP failed to provide a full continuum of
 25 appropriate placement, program and service options pursuant to *Title 34 Code of Federal*
 26 *Regulations* §§ 300.551 and 300.552.

1 192. In addition, the Plaintiffs allege and as found by the SRO that the IEP failed to ensure
 2 Plaintiff Preschooler II's behavioral intervention program and related services at no cost to his
 3 parent pursuant to *Title 34 Code of Federal Regulations* §§ 104.33 and 300.300.

4
 5 193. Likewise, the Plaintiffs allege and as found by the SRO that the IEP failed to provide
 6 appropriate strategies and methods of positive behavioral intervention pursuant to *Title 20*
 7 *United States Code* §1414(d)(3)(B)(i); *N.A.C.* §§388.284(3)(C)(1)(2) and §388.077.

8
 9 194. Plaintiffs contend that they are, as a matter of law and fact, considered the prevailing
 10 party. They alleged they have substantially prevailed on the merits of their case. They further
 11 alleged they succeeded in changing the legal relationship between the parties. Accordingly, they
 12 are entitled, as such, to reasonable attorney fees and costs for the underlying administrative
 13 hearing and in bringing this petition for judicial review.

14
 15 195. Plaintiffs allege that as part of the conduct and omissions exhibited by the Defendants,
 16 and each of them, the Defendants failed to properly consider Plaintiff Preschooler II's unique
 17 and individual needs as a child with autism and TS, or to plan or provide an appropriate
 18 individualized educational program for Plaintiff Preschooler II to address these needs in a full
 19 continuum of placement, claiming that he could be adequately served in a generic group-based
 20 educational program as was available in the district without the benefit of affording Plaintiff
 21 Preschooler II proper supplementary services and supports.

22
 23
 24 196. The Plaintiffs are informed and believe that Plaintiff Preschooler II was subjected to
 25 aversive interventions by Defendant LiSanti during the time period while at Betsy Rhodes
 26 Elementary School, as fully stated herein.

27
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1 197. Plaintiff allege that the remaining Defendants and each of them, aided, supported,
 2 incited and ratified Defendant LiSanti's conduct and omission by refusing, failing and acquiesced
 3 to comply with the mandates at *N.R.S.* §§ 388.5285 and 388.5295, respectively.
 4

5 198. SRO Eckrem, while finding NRS 388.521 *et. seq.* the Aversive Intervention Law, part
 6 of state standards enforceable under IDEA and finding that the state may have legislative standards
 7 to place higher standards than those provided by Congress under IDEA, and having found that
 8 a violation of NRS 388.521 may appropriately be considered in a claim for the denial of FAPE,
 9 erroneously, and contrary to factual findings, found that a state hearing officer was without
 10 jurisdiction to review enforcement or nonenforcement of NRS 388.521 *et. seq.*; erroneously and
 11 improperly found proper exclusion of evidence into aversive interventions by Clark County
 12 police personnel erroneously and improperly affirmed the exclusion and pre-editing of
 13 questioning Detective Loren Johnson in review of his notes and investigation.
 14

15 199. Separately, SRO Eckrem after finding a procedural violation of FAPE by the failure to
 16 report to parent aversive interventions, thus finding a "nexus" under her own test for the
 17 relevance of aversive interventions and the violation of NRS 388.521 *et. seq.*, unaccountably,
 18 failed to make a finding as to this nexus between NRS 388.521 *et. seq.* and admitted aversive
 19 interventions supported by credible evidence at the hearing officer level.
 20

21 200. SRO Eckrem, by finding no jurisdiction to "generally" enforce NRS 388.521 *et. seq.*
 22 improperly excluded evidence and improperly excluded additional evidence with respect to
 23 aversive interventions investigation involving the Defendants and each of them.
 24

25 201. Having found that Plaintiff Preschooler II's parents were substantially deprived of
 26

1 participation in the IEP process, in part, by not being informed of admitted aversive
 2 interventions, and thus finding a violation of FAPE, unaccountably failed to find a per se
 3 violation of NRS 388.521 et. seq. and its 24 hour notification, discipline and correction
 4 procedures.
 5

6 202. Unaccountably, and contrary to the evidence, the SRO Eckrem under her own "nexus"
 7 test, failed to find an impairment of educational benefit when it is clear that the very behaviors
 8 that were not addressed by the Defendants, i.e., violent behaviors, were caused and fomented by
 9 a violent and hostile physically abusive environment in Plaintiff Preschooler II's classroom.
 10

11 203. Plaintiffs specifically seek to append and add additional evidence of the following:

12 a. The course and conduct in the District police and District
 13 investigation of Plaintiff Preschooler II's classroom that was
 14 suppressed at both the hearing officer and state review officer
 15 levels;
 16

17 b. Additional evidence concerning the direct detriment, harm
 18 and effect of aversive interventions on the behaviors and the
 19 physical and mental health of Plaintiff Preschooler II, including
 20 but not limited to the effect of trauma and blows to the head on
 21 Plaintiff Preschooler II, given his physical, mental and especially
 22 neurological condition with Tuberous Sclerosis;
 23

24 c. Additional statistical and compliance information
 25 concerning the systematic suppression by the Defendants Clark
 26
 27

County Administration and State of nonreporting and noncorrection and general notation in aversive interventions.

d. Such other additional evidence, deemed permissible and relevant.

204. Plaintiffs seek, therefore, the following additional relief in addition to the previous violations of the denial of FAPE by Defendant District:

1. Additional compensatory education over and above that awarded by the hearing officer and increased by the state review officer;

2. Additional and increased hours of home intervention from 20 hours per week to at least 35 hours per week;

3. A reduced school day appropriately allow Plaintiff Preschooler II to benefit from intensive home intervention based on reduced physical and endurance due to both Tuberous Sclerosis and the taking of anti-seizure medication by Plaintiff Preschooler II.

205. The Plaintiffs bring this action in the district court under *Title 20 United States Code* § 1415(I)(2) of the Act seeking review and modification of that administrative decision. Invoking the statutory mandate that the court "shall hear additional evidence at the request of a party," the Plaintiffs respectfully proposed that this court hear a substantial volume of testimonial and documentary evidence in addition to the record of the administrative proceedings developed in

1 the state system.

2 206. The School District Defendants acted (and are acting) under color of state authority in
3 failing and refusing to enforce the provision of *N.R.S.* § 388.529 and *N.R.S.* § 388.5295.

4 207. *NRS* § 388.529 pertinently provides that “. . . ***a person who intentionally uses aversive***
5 ***intervention on a pupil with a disability or intentionally violates NRS § 388.527 is subject to***
6 ***disciplinary action pursuant to NRS § 391.312 or § 391.300 or both.***”

7
8 208. *N.R.S.* § 388.5295 pertinently provides when a violation of the aversive intervention law
9 occurs the CCSD must report the matter to the CCSD Board within twenty (24) hours. In
10 addition the CCSD Board must develop, in corporation with the Defendant Garcia, a corrective
11 plan to ensure that within thirty (30) calendar days after the violation occurred, appropriated
12 action is taken to prevent future violations. Furthermore, Defendant Garcia is mandated to submit
13 the plan to the State Defendants.

14 209. Plaintiffs contend that the failing to take corrective action and curtail the abuses by the
15 State and School Administration Defendants and others under the employment or in association
16 with has not ceased and has a history, custom and practice of such abuses, including but not
17 limited to allegations of suppression and destruction of documents in a 1997 special education
18 audit involving many years of past abuses of disabled students by aversive interventions;
19 including but not limited to various aversive interventions claims asserted in state and federal
20 courts.

21 210. Plaintiffs allege and are informed and believe that at all procedural and/or substantive
22 stages of the facts, incidents, allegations and events mentioned above all the Defendants had
23

1 either power to stop the misconduct of one or more other Defendants and/or had the authority
 2 to train, educate and/ or terminate the service of its, her/his subordinates to bring them in
 3 compliance with the Federal and State mandates regarding the education, instruction,
 4 supervision, discipline, treatment and/or methods of protection of Plaintiff Preschooler II and his
 5 parents and those similarly situated, yet failed, refused or did not want to do so.

7 211. Plaintiffs allege that they have incurred attorneys' fees and costs for representation
 8 through all aspects of the administrative due process proceedings pursuant to the **IDEA** and
 9 Federal and State statutes and codes. In addition, Plaintiff allege that have also incurred legal
 10 fees and costs in bringing this petition for judicial review.
 11

12 **WHEREFORE** Plaintiffs respectfully request this Honorable Court:

- 13 1. assert jurisdiction over this review;
- 14 2. Allow appropriate supplementation of the record for review after discovery;
- 15 3. Specific relief in the form and substance requested at hearing and state review;
- 16 4. Intensive home-based behavior intervention education of an additional fifteen(15)
 17 hours per week for at least thirty-five (35) hours per week for two (2) years, with consequent
 18 reduction of class time;
- 19 5. Compensatory education awarded for full reimbursement of past in home
 20 intensive behavioral training by LIFE, in addition to amounts previously awarded;
- 21 6. Reduction of school participation in recognition of Plaintiff Preschooler II's
 22 medical and behavioral need for more rest time;
- 23 7. In the Matter of Defendants Nevada, State Board and CCSD Board and Garcia,
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1 Green, Davis, Wyatt and Harley :

2 a. Declare that *N.R.S* § 388.521 *et. seq.* is relevant, jurisdictional and must
3 be included within the IDEA procedures and all IEP's, with parent notification of the law;
4

5 b. Declare and require a State administrative oversight of corrective plans
6 and actions pursuant to *N.R.S* § 388.5295.4;

7 c. Create a Citizen's Complaint Committee at the State and District level,
8 consisting of ten (10) individuals who will receive, investigate and adjudicate complaints of
9 student's neglect, abuse or mistreatment of disabled students and accept direct complaints from
10 either the student, his/her parent, legal guardian and/or any individual concerned. It shall be
11 mandated to review all programs and reports under *N.R.S.* § 388.521. *et seq.*
12

13 d. Create a system of judicial review to ensure statutory compliance;
14

15 8. Award all fees and costs for all aspects of the proceedings below and before this
16 court, according to proof; and

17 9. Any and all other relief the Court deems fair and just.
18

19 SECOND CAUSE OF ACTION

20 VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

21 *Against Defendants State, State Board, CCSD Board, and District*

22
23 212. Plaintiffs hereby allege all matters set forth in the preceding paragraphs of this Complaint
24 and incorporate them herein.

25 213. The Plaintiffs alleges that the conduct, acts and omissions of the Defendants, State, State
26 Board, CCSD Board, and District, were committed in conscious disregard, deliberate
27

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1 indifference, and/or gross misjudgment and in bad faith as to the rights of the Plaintiffs as
 2 previously alleged.

3
 4 **WHEREFORE**, the Plaintiff respectfully request that this Honorable Court:

- 5 1. Assert jurisdiction over this action.
- 6 2. Issue an Injunction prohibiting the Defendants for interfering, discriminating and
 7 obstructing disabled students rights, entitlements, services and privileges under the **ADA**.
 8
- 9 3. A monetary award not less than \$1,000,000.00 for the deprivation of Plaintiffs'
 10 rights under the **ADA**;
- 11 4. A monetary award in an amount that is just and proper;
- 12 5. For attorney's fees and costs for this lawsuit under *Title 42 United States Code*
 13 § 1988;
 14
- 15 6. For any other relief the Court deems fair and just.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATION OF THE REHABILITATION ACT**

18 *Against Defendants State, State Board, CCSD Board, and District*

19
 20 214. Plaintiffs hereby allege all matters set forth in the preceding paragraphs of this Complaint
 21 and incorporate them herein.

22
 23 215. The Plaintiffs alleges that the conduct, acts and omissions of the Defendants, State, State
 24 Board, CCSD Board, and District, were committed in conscious disregard, deliberate
 25 indifference, and/or gross misjudgment and in bad faith as to the rights of the Plaintiffs as
 26 previously alleged.
 27

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1 constitutional rights under *Title 42 United States Code* § 1983;

2 3. A monetary award for punitive damages, in an amount that is just and proper;

3 4. For attorney's fees and costs for this lawsuit under *Title 42 United States Code*
4 § 1988;

5 5. For any other relief the Court deems fair and just.

6
7 **FIFTH CAUSE OF ACTION**

8 **MONELL/CANTON**

9 ***Against Defendants CCSD Board and District***

10
11 218. Plaintiffs hereby allege all matters set forth in the preceding paragraphs of this Complaint
12 and incorporate them herein.

13
14 219. The Plaintiffs allege that Defendants Garcia, Green; Harley; Wyatt, and Li Santi at all
15 times mentioned herein were the employees, representatives and agents of Defendants CCSD
16 Board and District.

17
18 220. The Plaintiffs allege that Defendants CCSD Board and District failed to properly train,
19 supervisor, discipline, and educate Defendants Garcia; Green; Harley; Wyatt; and Li Santi in the
20 various classification, monitoring, education, safety and control of disabled and autistic students.

21
22 221. The Plaintiffs contend that Defendants CCSD Board and District failed to properly train,
23 supervisor, discipline, and educate Defendants Garcia, Green, Harley, Wyatt, and Li Santi
24 resulted in the injuries to the Plaintiffs has alleged herein.

25 **WHEREFORE**, the Plaintiff respectfully request that this Honorable Court:

26 1. Assert jurisdiction over this action.
27

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2. A monetary award not less than \$1,000,000.00 for the deprivation of Plaintiffs' constitutional rights under *Title 42 United States Code* § 1983.

3. A monetary award for punitive damages, in an amount that is just and proper;

4. For attorney's fees and costs for this lawsuit under *Title 42 United States Code* § 1988;

5. For any other relief the Court deems fair and just.

SIXTH CAUSE OF ACTION

ASSAULT, BATTERY AND USE OF AVERSIVE INTERVENTIONS

Against Defendant LiSanti

222. Plaintiffs hereby allege all matters set forth in the preceding paragraphs of this Complaint and incorporate them herein.

223. Plaintiffs allege that the actions of LiSanti as fully described above constituted assault, battery and aversive interventions contrary to *N.R.S* § 388.521 *et. seq.* and a violation of the *Fourth Amendment* to the United States Constitution.

224. As a direct and proximate result of Defendant LiSanti's actions, as described above, Plaintiff sustained actual damages including bodily injuries to his person, pain, severe, and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness, anxiety and permanent behavioral and psychological harm as an autistic child, in an amount to be ascertained according to proof at trial.

225. The actions of Defendant LiSanti, as described above, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or conscious disregard of, the harm that

1 would be inflicted upon Plaintiff. As a result of said intentional conduct, Plaintiff is entitled to
 2 punitive damages in an amount sufficient to punish the Defendant and to deter others from like
 3 conduct.
 4

5 226. Plaintiffs were forced to hire an attorney to represent him in this matter and Plaintiff should
 6 be awarded reasonable attorneys' fees and costs.

7 **WHEREFORE**, the Plaintiff respectfully request that this Honorable Court:

- 8 1. Assert jurisdiction over this action.
- 9 2. A monetary award not less than \$1,500,000.00.
- 10 3. A monetary award for punitive damages, in an amount that is just and proper;
- 11 4. For any other relief the Court deems fair and just.
- 12
- 13

14 **SEVENTH CAUSE OF ACTION**

15 **NEGLIGENCE CLAIMS**

16 *Against Defendant LiSanti and District*

17 227. Plaintiffs hereby allege all matters set forth in the preceding paragraphs of this Complaint
 18 and incorporate them herein.

19 228. Defendant LiSanti at the times and circumstances alleged negligently caused bodily and
 20 mental, emotional, behavioral and psychological damage to the Plaintiff Preschooler II.

21 229. Defendant District knew, or should have known of such conduct, and failed to prevent
 22 such conduct and the District was negligent in its employment, training supervision and control
 23 of said Defendant LiSanti, whether the latters' acts be deemed intentional or negligent.

24 230. At all times relevant, the District had *respondeat superior* and vicarious liability for the
 25


1 tortuous acts and omissions as fully alleged herein, committed by other Defendants and each of
2 them.

3 **WHEREFORE**, the Plaintiff respectfully request that this Honorable Court:


- 4
- 5 1. Assert jurisdiction over this action.
 - 6 2. A monetary award not less than \$1,500,000.00.
 - 7 3. For any other relief the Court deems fair and just.
- 8

9 DATED this 23 day of March, 2004.

10
11 By


MARIANNE C. LANUTI, ESQUIRE
Nevada Bar no. 007784
Law Offices of Marianne C. Lanuti

12
13
14 By


NIELS L. PEARSON, ESQUIRE
Nevada Bar No. 001061
PEARSON, PATTON,
SHEA, FOLEY & KURTZ, P.C.
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL


Plaintiffs respectfully request a jury trial in this matter.

By:



NIELS L. PEARSON, ESQUIRE
Nevada Bar No. 001061
PEARSON, PATTON, SHEA, FOLEY & KURTZ, P.C.

By:




MARIANNE C. LANUTI, ESQUIRE
Nevada Bar no. 007784
Law Offices of Marianne C. Lanuti & Associates
Attorneys for Plaintiffs

CERTIFICATION OF INTERESTED PERSONS & ENTITIES

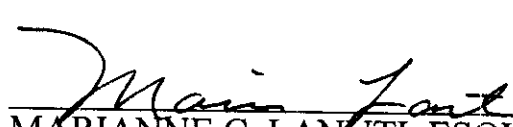
Counsel herein have a financial interest only so far as attorneys' fees may be awarded pursuant to *Title 42 United States Code*. § 1988. No other financial interests are known to exist relative to this action, except those authorized by statute regarding attorneys' fees and cost under **IDEA** and the State Causes of Action theories of law.

By:



NIELS L. PEARSON, ESQUIRE
Nevada Bar No. 001061
PEARSON, PATTON, SHEA, FOLEY & KURTZ, P.C.

By:



MARIANNE C. LANUTI, ESQUIRE
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Attorneys for Plaintiffs

Jane Roe v. State of Nevada, et al.

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